DOCUMENT RESUME

ED 376 563 EA 026 251

AUTHOR Hyman, Ronald T.
TITLE Corporal Punishment: Just What Is It and What Should We Do About It?
PUB DATE Nov 93
NOTE 15p.; Paper presented at the Annual Meeting of the National Organization on Legal Problems of Education (39th, Philadelphia, PA, November 19-21, 1993).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Child Welfare; Compliance (Legal); *Corporal Punishment; *Discipline Policy; *Discipline Problems; Elementary Secondary Education; *Legal Problems; *Legal Responsibility; Punishment; Sanctions

ABSTRACT

Opposition to corporal punishment in the United States has increased over the last 2 decades. This paper explores the legal implications of the maltreatment of children in schools, particularly corporal punishment. Despite the general opposition to corporal punishment, several issues must still be resolved. The first of these is one of definition: What constitutes corporal punishment? The ramifications of using broad or narrow definitions are discussed. The second issue involves the drafting and enacting of an acceptable law. Problems center on defining whether the following practices constitute corporal punishment: infliction of pain (how much and what kind), confinement, verbal abuse, and force. The third issue is the retraining of teachers, who must be given alternatives for handling student discipline problems. In conclusion, the prohibition of corporal punishment is not enough--the legal and educational communities must refine the concept of corporal punishment, draft and enact more acceptable laws, and retrain teachers in the use of acceptable practices. The endnotes contain three references. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 376 563

Corporal Punishment: Just What Is It and What Should We Do About It?[1]

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Ronald T. Hyman, Esq.
Rutgers University
New Brunswick, NJ 08903-5050

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
R. Hyman
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

(Paper presented at the 39th Annual Convention of the National Organization on Legal Problems of Education, November 19-21, 1993, Philadelphia, Pa; Convention theme is "Education with Liberty and Justice for All"; Session theme is "An Unexpected Violence Within: Legal Implications of the Maltreatment of Children in Schools.")

Appropriately, we who are concerned with education law concern ourselves here in this city of Philadelphia, our American city symbolizing our country's early quest for liberty and fair treatment of governmental officials, with the legal implications of the maltreatment of children in schools. One part, and only one part, of that maltreatment is corporal punishment. There has definitely been a growth in the opposition to corporal punishment in the last 16 years, as witnessed by the number of states and cities which have now passed laws prohibiting or limiting some form of corporal punishment in their schools. In 1977, Supreme Court Justice Lewis Powell noted in his majority opinion for Ingraham V. Wright, 430 U.S. 651(1977), that only two states prohibited corporal punishment in schools. In contrast, in its current Fall issue of The Last ? Resort, the Committee to End

EA026351

BEST COPY AVAILABLE

Violence Against the Next Generation lists 26 states and many local school districts in the remaining 24 states which have abolished corporal punishment.

It is not possible to pinpoint the reasons and each reason's percentage of influence for the apparent change in attitude toward corporal punishment in schools during the past decade and a half. Nevertheless, the opposition to corporal punishment arose and continues to arise synergistically from several sources, such as a general societal sensitivity to child abuse; the formation of vocal organizations specifically devoted to the abolition of child abuse and corporal punishment (e.g., The Committee to End Violence Against the Next Generation headquartered in Berkeley, California, and The National Coalitional to Abolish Corporal Punishment in Schools headquartered in Columbus, Ohio); the increase in the number and stature of professional organizations opposed to corporal punishment (e.g., the American Medical Association; the American Bar Association, and the National PTA); the shift of emphasis in family child rearing to a psychological development approach away from a strict parents' rights approach; the rise of influence of the women's movement in American life and policy making; and the rise in the amount of books, newspaper and magazine articles, and television and radio programs advocating the abolishment of corporal punishment in schools and homes.

Whatever the data are regarding the decrease in corporal punishment, whether the data refer to the increase of the number

of school districts abolishing corporal punishment or to the decrease of over 50% in the number of students actually struck since 1980, there is no doubt that we have changed in the U.S. Those who oppose corporal punishment are rightfully happy. Perhaps they should be satisfied and celebrate their accomplishment. Perhaps they should be optimistic about the future strength of the current trend. But they must not gloat, declare victory, or be complacent because there still are too many issues to resolve and work out legally, educationally, and socially. Let me explore just a few of these below.

The first issue is a conceptual one. We must ask: What constitutes corporal punishment? When a state, for example, prohibits corporal punishment, what is it that the state bans by law? When citizens, educators, researchers, judges, and lawyers speak about corporal punishment do they speak about the same thing? An inspection of some various laws and the literature about corporal punishment reveals that the most common usage of the term "corporal punishment" refers to some manner of striking or hitting a student with a paddle, or stick (cane or switch), or belt, or hand. The result is that "paddling a student" or "spanking a student" becomes synonymous with "corporally punishing a student" or just plain "using corporal punishment." For example, School District #1 in Johnson County, Wyoming has established that "corporal punishment shall refer to the use of an open hand, paddle, switch, or like instrument on the buttocks."[2] The U.S. Department of Education which collects

data on the prevalence of corporal punishment counts the "number of students struck each year."[3] Similarly, when Governor David Walters of Oklahoma gave his support to Child Abuse Prevention Month in April 1993, he designated April 28 as "Spank-Out-Day," [to paraphrase the anti-smoking efforts of the smoke-out day held by cancer-prevention advocates] and went on to "encourage all parents and caretakers to not hit children for one day and to increase awareness of positive forms of discipline and parenting."[4]

This conception of corporal punishment as hitting does a disservice to students and teachers alike. Students know intuitively that teachers can punish their bodies (corpora) in more ways than hitting. However, teachers can and do deceive themselves and others to believe that the elimination of paddling in the schools means that physical punishment is gone from the schools and that they are abiding by the law established to prohibit corporal punishment. That is to say, deception results because most states and local boards of education do not restrict mere paddling of students but rather the infliction of physical pain upon a student. For example, the Orangeburg County School District No. 5 of South Carolina defines corporal punishment as "inflicting physical hurt upon a student in order to punish him for misconduct."[5] A State of Michigan statute defines corporal punishment as "the deliberate infliction of physical pain by any means upon the whole or any part of a pupil's body as a penalty or punishment for a pupil's offense."[6]

Within a broader conception of corporal punishment--the infliction of physical pain--the teacher who avoids striking the students but commands students to stand erect for one hour, or prevents the students from going to the lavatory, or directs students to run in place until exhausted is still using corporal punishment. Surely, the recognition of the conceptual issue and the potential for self-deception, the deception of others, and the evasion of the spirit of the law prohibiting corporal punishment led to the explicitness of the position taken by the Southfield, Michigan School Board. That school board states:

> Corporal punishment is defined as the infliction of bodily pain for disapproved behavior. However, in the definition of corporal punishment it is necessary to include under the phrase, "infliction of bodily pain," not only striking but any action which seeks to induce bodily pain, for example, forcing the student to stand on tip toes with finger-tips outstretched against the wall, or to crouch or bend over and remain in such painful cramped position for long periods of time, or to run laps around the building or in the gym until exhausted, etc.[7]

The question of what constitutes "physical pain" arises when we consider a not uncommon mode of punishment, namely, restraint. Restraint comes in two basic forms, (1) physical restraint by tying a student to a chair or tethering a student to a desk in

order to lessen mobility and (2) confining a student to a limited space such as a closet or room. When physical restraint is used, especially when the rope is tied loosely or the tether is long, there may well be little or no physical pain felt by the student. Moreover, with the use of confinement the student may feel no physical pain at all but rather philosophical pain. That is, with either type of restraint the student may feel the loss of freedom of movement, a loss of mobility, or a sense of imprisonment but no physical pain which might well be included under the definitions set forth by the Southfield School Board or the State of Michigan. Recognition of the conceptual issue dealing with physical restraint as corporal punishment and the potential for evasion of the spirit of the law by adhering to a narrow definition of physical pain apparently led to the position taken by the Yakima, Washington Public Schools. That school board states its own specificity about corporal punishment as follows, alluding to the Eighth Amendment of our federal Constitution:

> No cruel or unusual form of corporal punishment shall be inflicted upon any student, including but not limited to restraint by binding arms, legs, or torso, washing out the mouth with soap, and verbal abuse.[8]

With the above policy on corporal punishment which offers physical restraint by binding as coming within the category of cruel and unusual punishment, the Yakima school board clarifies

one issue but raises another serious one. The school board causes us to consider the inclusion of verbal abuse as being a form of corporal punishment. Many people might well begin to object to this inclusion; they might well agree that paddling a student, tying a student to his or her desk, commanding a student stand on tip-toes with fingers outstretched against the wall, and even washing out the mouth with soap are forms of corporal punishment. They might even agree that these constitute cruel and unusual corporal punishment to be prohibited in schools. However, they might maintain that the inclusion of verbal abuse as a form of corporal punishment stretches the concept of corporal punishment too far. Still, children who are abused verbally may feel physical pain as they tremble, become fearful, cry, experience nausea, and even wet their pants. Thus, we may legitimately inquire to what extent verbal abuse is cruel and unusual corporal punishment, which is to be prohibited, or emotional abuse which is condemned but not yet legally prohibited. For those schools and states with laws against corporal punishment but none explicitly opposed to verbal abuse or emotional abuse the issue is a meaningful one for teachers, lawyers, judges, and parents. In short we may well ask whether verbal abuse and emotional abuse are part of corporal punishment since the pain felt by the child occurs in the body (where else could it occur?) and affects the functioning of the body.

In spite of the specificity of the Southfield, Michigan School Board's policy, the specificity of the Yakima, Washington

School Board policy, and the more general expression "infliction of bodily pain by any means" used by the State of Michigan, common parlance used in newspapers, reports, and conversations still equates hitting a student with corporal punishment. It is this usage of the term "corporal punishment" which leads too many people to claim incorrectly that corporal punishment is prohibited or eliminated. This usage is damaging and deceptive because only a narrow range of behavior is thereby eliminated while other forms of physical punishment may still be regularly employed by teachers.

A second issue concerns tne drafting and enacting of an acceptable law. Despite the confidence many educators and lawyers have in their ability to communicate to their clientele, it is necessary to admit that the writing and passage of a comprehensive anti-corporal punishment law are probably impossible. There remain significant differences of opinion as to what constitutes corporal punishment. As mentioned above, beyond the hitting of a student, there is less than 100% agreement on what should be prohibited. Some questions which need to be raised, discussed, and answered are: What level of bodily pain is necessary such that the pain will constitute a form of corporal punishment which deserves to be banned? (The State of Washington prohibits "bodily harm greater than transient pain or minor temporary marks."[9] What constitutes transient pain? What pain is not transient? To what extent are bruises minor temporary marks? Does a restraining squeeze of a student's

arm constitute corporal punishment?) What type of physical restraint will be permitted in our schools? Is confinement a form of corporal punishment? To what extent, if any, will confinement be permitted? (Keep in mind here that the schools have traditionally used confinement as perhaps the most common means for punishing students. There probably is no middle or secondary public school in the country that does not have some form of detention period and/or in-school suspension system in use today. Will teachers be willing to give up their right to detain students after school and confine them to a study hall of some sort?) What constitutes verbal abuse? To what extent is verbal abuse a form of corporal punishment? Is emotional punishment in general a form of corporal punishment? (Note that a teacher can emotionally punish a student without any verbal abuse by simply rejecting him or discriminating against her. The consequences of rejection and discrimination do have their behavioral and corporal indicators, such as poor sleeping patterns.) What constitutes force, whether it is physical force or verbal force, in schools? To what extent, if any, will corporal punishment be permitted during a school's voluntary activities, such as basketball games, football practice, and marching band. Is intention a necessary element in differentiating punishment from mere occurrence of bodily pain?

Unless we agree on answers to such questions it is not possible to draft a statement and enact a law that will guide the conduct of teachers according to our concept of corporal

punishment. No state or local school district, as far as I know, has offered a concise law or policy which answers all of the questions above, and they are only some of the questions that need to be addressed. Probably it is impossible to write an airtight, no-loopholes, comprehensive-but-concise law. In this way the issue of defining corporal punishment is not different from defining other legal, educational, and social concepts such as excessive force, excellent teaching, sexual harassment, media violence, free speech, and good citizenship. A New York Times op-ed article three weeks ago on the current topic of censoring violence in movies and television programs aptly put the problem this way: "Writing law to cover every conceivable form of violence to be banned is obviously impossible. Screenwriters' imaginations will always be ten miles ahead of the plodding Congressman."[10]

As a result of the difficulty of defining corporal punishment and the improbability of drafting an air-tight explicit law, ultimately we will need to rely on a court's interpretation of whatever the existing law is. The more general the language of the written law the wider will be the range of interpretations offered by the courts. Thus, though we face difficulties in the drafting and enacting of laws prohibiting corporal punishment, we must continue to refine our written laws as we refine our concept of corporal punishment. Furthermore, we must recognize that we need to keep our concept and laws in line with the changes in society at large which are always occurring.

For example, the Supreme Court decision in Hudson v. McMillian, 112 S.Ct. 995 (1992) indicates that we must recognize that society is changing its standards of what constitutes cruel and unusual punishment of prisoners. The Court said that "the Eighth Amendment's prohibition of cruel and unusual punishment 'draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society,' and so admits of few absolute limitations." Id. at 1000 (citations omitted). The evolving standards of decency might some day consider teacher sarcasm and other forms of verbal abuse as unacceptable indecent punishment for sensitive students. What is ordinary punishment now may be cruel and unusual in the future. What seems as a stretch today might not be so in a score of years.

A third issue, a most serious one, concerns the retraining of teachers. We might come close to arriving at our desired definition of corporal punishment and even enact a well-drafted law to guide teacher behavior. However, unless we train teachers in new techniques for dealing with students who behave improperly, we will not significantly improve today's situation. Teachers who lack alternatives to corporal punishment will surely use their creative imaginations to find new ways to discipline their students. Some of these ways will be acceptable and some not so. If we ban only the paddling of students, then some teachers will resort to imposing physical restraint, or confinement, or painful physical positions. If we conceive of pain in a narrow sense and ban only physical pain, then some

teachers might resort to enhanced verbal or emotional abuse, including sarcasm, threats, scolding, rejection, and isolation. These alternatives to corporal punishment, as understood in common parlance, are not acceptable to those of us who seek to develop an environment which promotes healthy learning.

We simply cannot merely remove an old, established mode of punishment without providing new and acceptable alternatives. As we ban corporal punishment in a narrow or, especially, a broad sense, we must train prospective teachers and retrain in-service teachers in ways to minimize discipline problems and to correct disciplinary situations in a positive manner. Unless we do so we will not change the schools significantly. Without new and acceptable alternatives to banned behavior, teachers are likely to remain frustrated and angry, thereby creating still further problems for their students, parents, and school. The lack of acceptable alternatives will likely lead to deception, loopholes, and negative creativity, all taking place in an environment which impedes learning humanely.

Perhaps we need to enact laws which require prospective and in-service teachers to learn acceptable alternatives as part of the certification process. Just as we require teachers to learn about child development and lesson planning we might well require them to learn advanced techniques for preventing discipline problems, using alternative disciplinary techniques, and coping with teacher-pupil emotional issues in a positive manner. A written law on this matter will not be a panacea, but it will

serve as an explicit policy and guide to teachers. In this way we can shift our approach from telling teachers what not to do to guiding them to improved, acceptable behavior.

Thus, in sum and substance people must stop their complacency, reduce their cheerleading, and downplay their emphasis on the number of their successes in prohibiting corporal punishment in local and state school districts even though at times they deserve some congratulations and celebrations for their achievements. Whatever corporal punishment is and however much it exists the prohibition of it is not enough. All of us must move on to the necessary and positive tasks of refining our concept of corporal punishment, drafting and enacting more acceptable laws, and retraining our teachers in the use of acceptable skills and habits of teaching students. We must eliminate the violence[11] and maltreatment of our students in schools and promote the evolving standards of social decency within our society and especially within our schools.

ENDNOTES

1. This paper is based on two recent books published by the National Organization on Legal Problems of Education: R. Hyman & C. Rathbone, Corporal Punishment in Schools: Reading the Law (1993); and R. Hyman & C. Rathbone, The Principal's Decision: A Teaching Monograph on Corporal Punishment (1993). See these books for further examination of the legal, educational, and social issues of corporal punishment as well as for questions about reading the law and for a listing of state statutes and selected cases.

2. R. Hyman & C. Rathbone, Corporal Punishment in Schools: Reading the Law 39 (1993).

3. 22 The Last ? Resort 4 (Fall 1993).

4. Id. at 12, which reproduces a photocopy of Governor Walters's proclamation.

5. Hyman & Rathbone, supra note 2, at 28.

6. Id.

7. Id. at 29.

8. Id.

9. Id. at 50.

10. Baker, Candidate for Czar, N.Y. Times, Oct. 26, 1993, at A21.

11. Corporal punishment of students by teachers is but one aspect of the violence occurring in our schools. According to The New York Times (Nov. 3, 1993, at B17, Column 1) there were 5,761 violent incidents in New York schools alone last year. The various aspects of violence, including the violence inflicted by students on each other, are connected. Violence in schools definitely exists, and it deserves our attention, not only the attention of journalists who write about it frequently.